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IN THE

Supreme Court of the United States

October Term, 1965
No. 746

ORVILLE RAINEY, BETTY L. RAINEY, NORBERT F. MOORE, JANET MOORE, ARTHUR MUIR, CLAIRE D. MUIR,

Petitioners,

vs.

GEORGE A. FULLER COMPANY, a corporation,

Respondent.

ORVILLE RAINEY, BETTY L. RAINEY, NORBERT F. MOORE, JANET MOORE, ARTHUR MUIR, CLAIRE D. MUIR,

Petitioners,

vs.

THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

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SUBJECT INDEX

	Page
Opinions of the courts below	2
Statement of the grounds on which the jurisdiction of this court is invoked	2
Questions presented for review	3
Constitutional provisions and statute which the case involves	4
Cases believed to sustain jurisdiction	5
Federal questions raised are substantial	5
Statement of case	6
Stage of the proceedings in the court of first instance and in the Appellate Court at which and the manner in which the federal question sought to raise was raised	8
Argument amplifying reasons relied on for allowance of the writ	9
Issue I.	
Deprivation of constitutional rights under the Fourteenth Amendment, Section 1, of due process of law and of equal protection of the law by respondents' procedure in increasing an estimate of the total cost for a public inprovement without a hearing or opportunity to protest	11
Issue II.	
Failure to satisfy requirement of due process of law by notice of publication alone	14
Opinion of the District Court of Appeal	App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Beck v. Ransome, Crummery Co., 42 Cal. App. 674	11
City of Chicago v. Terwilliger, 253 Ill. 395, 97 N.E. 694	13
City of Chicago v. Wilder, 184 Ill. 397, 56 N.E. 395	13
City of Chicago Heights v. Angus, 267 Ill. 628, 108 N.E. 758	13
City of Lewistown v. Warr, 52 Mont. 353, 157 Pac. 954	13
City Street Improvement Co. v. Pearson, 181 Cal. 640	13
Clarke v. City of Chicago, 57 N.E. 15	13
De Haven v. Berendee, 135 Cal. 179	11
Firestone Tire and Rubber Co. v. Board of Supervisors, 166 Cal. App. 2d 519	12, 13
Flynn v. Chiapari, 191 Cal. 139	14
Jones v. Walker, 47 Cal. App. 2d 566	13
Koich v. City of Helena, 132 Mont. 194, 315 P. 2d 811	13
Londoner v. Denver, 210 U.S. 373	5, 8, 14
McNutt v. City of Los Angeles, 187 Cal. 245, 201 Pac. 592	12
Meadowbrook v. City of St. Louis, 104 N.W. 2d 540	12
Miller v. McKenna, 23 Cal. 2d 774	13
New York, New Haven, & Hartford Railroad Co., 344 U.S. 293, 296	5
Pacific Pavement Co. v. Verso, 12 Cal. App. 362	11

Page

Payne v. Village of South Springfield, 161 Ill. 285, 44 N.E. 105 13

People v. Van Nuys Lighting District, 173 Cal. 792 13

Taylor v. City of Los Angeles, 180 Cal. App. 2d 255, 4 Cal. Rptr. 209 13

Wisconsin Electric Power Co. v. City of Milwaukee, 352 U.S. 948, 77 S. Ct. 324, 1 L. Ed. 2d 241 5

Statutes

California Streets and Highways Code, Sec. 5100.. 4

California Streets and Highways Code, Sec. 5234 .....4, 13

California Streets and Highways Code, Sec. 5258 .....3, 5, 6, 7, 11, 12, 13

California Streets and Highways Code, Sec. 5259 .....3, 5, 6, 12, 13

United States Code, Title 28, Sec. 1257(3) 3

United States Constitution, Fourteenth Amendment, Sec. 1 .....2, 4, 5, 6, 11, 12, 13, 14, 15

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THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of Amercia:

The petition of Orville Rainey, Betty L. Rainey, Norbert F. Moore, Janet Moore, Arthur Muir, and Claire D. Muir for a writ of certiorari to review a judgment of the Supeme Court of California made and

entered by minute order of said court on the 18th day of August, 1965, a copy of which is hereto appended, respectfully shows to this honorable court:

Opinions of the Courts Below.

No opinion was rendered by the Supreme Court in denying hearings to review the judgment of the District Court of Appeal, Second Appellate District, State of California, which sustained the judgment of the trial court.

The opinion of the Supreme Court of California is by minute order and has not been reported.

The opinion of the District Court of Appeal for the Second Appellate District, State of California, was delivered on the 24th of June, 1965, and was reported at 235 Advance California Appellate Reports 452.

Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked.

The date of the judgment sought to be reviewed and the date of its entry are the 18th day of August, 1965.

There was no order respecting a rehearing and there was no order granting an extension of time within which to petition for certiorari.

The cases are those involving due process of the law and equal protection of the law within the provisions of the United States Constitution, XIVth Amendment, Section 1, affording each person under the jurisdiction

of the United States due process of law and equal protection of the laws as administered by instrumentalities of the State Governments; and those involving the constitutionality of California Streets and Highways Code Sections 5258 and 5259, insofar as said coce sections deny due process of law and equal protection of the laws to petitioners.

The statutory provision believed to confer jurisdiction upon this court to review the judgment of the court below is United States Code, Title 28, Section 1257(3).

Questions Presented for Review.

(1) Have petitioners, or any of them, been deprived of any constitutional right—more particularly, of due process or equal protection—by the proceedings of respondents with reference to that certain improvement known as No. 2215?

(a) Did treating petitioners' notices and protests as a waiver under Streets and Highways Code Sections 5258 and 5259 violate due process toward them?

(b) Does failure to hold a public hearing before authorizing increased expenditures substantially beyond those approved at a previous hearing fulfill requirements of due process of law and equal protection of the law?

(2) Does notice by publication alone of the awarding of a contract satisfy due process of law?

Constitutional Provisions and Statute Which the Case Involves.

United States Constitution, XIVth Amendment, Section 1, confers upon the people of the United States the right to receive due process of law and equal protection of the law from the State Governments and their instrumentalities.

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Improvement Act of 1911 (California Streets and Highways Code Sections 5100 *et seq.*)

The aforesaid Streets and Highways Code Sections provide for waiver of any objections to the award of a contract and to any objections to any act or proceeding occurring prior to the time within which such objections were permitted to be filed.

Section 5234 provides:

> "No changes shall be made pursuant to this chapter which will increase the estimated cost by more than 20% of the total estimated cost of the work as determined from
>
> (a) The engineer's estimate, if the change is ordered prior to the award of the contract, or
>
> (b) The successful bid, if the change is ordered after the award of the contract; provided, that any changes so made shall also be subject to the limitations, if any, contained in any law applicable to the proceedings, which law may impose limitations upon the amount by which the estimated cost of the work or improvement may be increased by reason of such changes."

Section 5258 provides:

> "At any time within ten days from the date of the first publication of the notice of award of the contract, any owner of, or other persons having any interest in, any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to the work are irregular, defective, erroneous, or faulty, may file with the clerk a written notice specifying in what respect the said acts and proceedings are irregular, defective, erroneous or faulty. The notice shall state that it is made pursuant to this section."

Section 5259 provides:

> "All objections to any act or proceeding occurring prior to the time within which such objections are permitted to be filed in relation to the work, not made in writing and in the manner and at the time specified, shall be waived, if the resolution of intention to do the work has been actually published, as provided in this division."

Cases Believed to Sustain Jurisdiction.

1. *Londoner v. Denver,* 210 U.S. 373.

2. *Wisconsin Electric Power Co. v. City of Milwaukee,* 352 U.S. 948, 77 S. Ct. 324, 1 L. Ed. 2d 241.

3. *New York, New Haven, & Hartford Railroad Co.,* 344 U.S. 293, 296.

Federal Questions Raised Are Substantial.

1. The facts involve possible confiscation of property without due process of law under United States Constitution, XIVth Amendment, Section 1.

2. The facts involve possible confiscation of property without equal protection of the laws under United States Constitution, XIVth Amendment, Section 1.

3. The facts involve a possible misuse of the taxing power which results in denial of due process of law and of equal protection of the laws under United States Constituton, XIVth Amendment, Section 1.

4. The constitutionality of California Streets and Highways Code Sections 5258 and 5259, insofar as said code sections deny due process of law and equal protection of the laws.

Statement of Case.

These actions were instituted in the Superior Court of the County of Los Angeles, State of California, first by George A. Fuller Company, a corporation, the plaintiff in Case No. 29349, to enforce its contract for improvements that was let by The County of Los Angeles through the Board of Supervisors of the County of Los Angeles, defendants in Case No. 29216, to construct a local water supply system for which assessments were levied against, *inter alia,* Orville Rainey, Betty G. Rainey, Norbert F. Moore, Janet Moore, Arthur Muir, and Claire D. Muir, defendants in Case No. 29341 and plaintiffs in Case No. 29216; and second by the above individuals, your petitioners, in Case No. 29216, in which they sought via a class action a declaratory decree against the aforesaid County of Los Angeles and Board of Supervisors of the County of Los Angeles, as defendants, to nullify approval by the defendants of the aforementioned improvements and their creation of an improvement district, and to cancel the assessment by which funds were to be raised

for the improvement, designated County Improvement No. 2215.

The court rendered judgment that proceedings conducted by respondent county and respondent board of supervisors *in re* County Improvement No. 2215 were valid; that the contract awarded to respondent contractor was valid; that all proceedings conducted by respondent county and respondent board of supervisors did not deprive petitioners of any constitutional rights, and were not tainted by fraud.

The District Court of Appeal for the Second Appellate District, State of California, sustained this judgment by finding (1) that there was no constitutional right to any hearing until proceedings to determine the individual assessments have begun, (2) that assessment hearings are not begun until the work is completed and the exact cost is known, (3) that the Legislature could properly provide for a waiver of compliance with any jurisdictional procedures under the Improvement Act of 1911, (4) that petitioners' protests came too late—nine days after running of the period allowed by statute, (5) that the later filing of a complaint challenging the validity of the contract did not comply with Streets and Highways Code Section 5258, so as to preserve any right to object to irregularities, when it was lodged nine days too early—before the first publication of the notice of award and when it failed to specify that it was a notice pursuant to Section 5258, and (6) that consequently petitioners were barred from raising issues as to the validity of proceedings for the district and of the contract.

The Supreme Court of California denied rehearings without issuing an opinion, by a minute order entered the 18th day of August, 1965.

Stage of the Proceedings in the Court of First Instance and in the Appellate Court at Which and the Manner in Which the Federal Question Sought to Raised Was Raised.

The federal questions were timely raised in the court of first instance, the Superior Court of Los Angeles County, in the Complaint—Superior Court Case No. 846394 Clerk's Transcript, par. XXXII, Sec. 7, page 12; Sec. 9, pages 12-13; par. IV, pages 3-4; in the Findings of Fact, Clerk's Transcript page 31, par. XX; in the Conclusions of Law, Clerk's Transcript, page 33, par. IV; Clerk's Transcript, page 34; in the judgment, Clerk's Transcript, page 38, par. I. It was also raised in Plaintiff's trial brief page 9; plaintiff's head notes in part stating:

> "Assessment Districts Created Without an Opportunity to Protect and Be Heard Violate Due Process Clause Under the Fourteenth Amendment."
>
> "Due Process of Law as Guaranteed by the Fourteenth Amendment Required That the Property Owners Have an Opportunity to Support Their Objections to the Increased Estimate by Argument and Proof." (Plaintiff citing *Londoner v. Denver*, 210 U.S. 373 (1907)).

The federal questions were again raised by plaintiffs in their opening brief filed with the District Court of Appeal, page 74. The head note states:

> "Due Process as Guaranteed by the Fourteenth Amendment Required that the Property Owners Have an Opportunity to Support Their Objections to the Increased Estimate by Argument and Proof" (pp. 74-79).

The Appellate Court passed on the federal questions, pages 7-11 opinion Appendix A Petition for Hearing, filed in Supreme Court of California.

Upon appeal in the two cases by defendants and plaintiffs, respectively, to the District Court of Appeal for the Second District, State of California, these parties in their brief argued that the judgment below was erroneous for the reasons stated in their complaint and trial brief.

The District Court of Appeal for the Second District State of California, on the 24th day of June, 1965, affirmed the judgment in the two cases. A copy of the opinion appears in the addendum in the petition for hearing filed with the Supreme Court.

A petition for a hearing was filed with the Supreme Court of California by the parties defendant and plaintiff, respectively, arguing that the opinion of the District Court of Appeal was in error and should be set aside.

The Supreme Court of California, on the 18th day of August, 1965, denied a hearing without opinion by a minute order.

Argument Amplifying Reasons Relied on for Allowance of the Writ.

Petitioners respectfully represent to this honorable court that this is a case of great importance to the property owners of the State of California to wit: the constitutional right to protest and submit argument and proof to an increased estimate of a proposed public improvement after a prior hearing had set a more modest limit.

Use of the power to tax and to levy assessments must be reasonably and fairly exercised and must conform to a constitutional standard when, as here, the cost of improvements is to be borne by a comparatively limited number of affected property owners, rather than by the whole body of landowners in the entire county.

A major test of the reasonableness of the taxing authority's actions is the observance of due process required by statutory law in giving notice, holding hearings, allowing objections to be filed, in estimating costs, and in assessing nearby owners for the entire cost.

Consistency in following these rules for the protection of the public and to preserve the validity of the taxing authority's action from later challenges of irregularity requires a careful observance of rules which have been found applicable in similar circumstances. To abandon or circumvent these rules here would be discriminatory as to these petitioners and violative of their equal protection before the law.

Grave consequences await these and other taxpayers in the same and in other counties of the state if the respondents be allowed to augment previously determined cost figures by substantially increasing estimates without holding a public hearing on the merits of the increase. Such a course would indeed set a perilous precedent.

Echoes of "no taxation without representation" emerge from sorry episodes of nearly two centures ago when other taxing authorities chose to ignore the demands of the taxpayer to be heard in determining the amount and purpose of his tax burdens.

ISSUE I.

Deprivation of Constitutional Rights Under the Fourteenth Amendment, Section 1, of Due Process of Law and of Equal Protection of the Law by Respondents' Procedure in Increasing an Estimate of the Total Cost for a Public Improvement Without a Hearing or Opportunity to Protest.

The California courts have held that, where the local board fails to acquire original jurisdiction, a property owner may attack an assessment on this basis and rest upon his constitutional protection against deprivation of property without due process of law, under the United States Constitution XIVth Amendment, Section 1. Without jurisdiction in the board, the contractor has no equities against the owner.—*Beck v. Ransome, Crummery Co.*, 42 Cal. App. 674; *De Haven v. Berendee*, 135 Cal. 179; *Pacific Pavement Co. v. Verso*, 12 Cal. App. 362.

Since respondent Board of Supervisors failed to allow a protest hearing as to the increased estimate, and therefore did not have jurisdiction to award a contract based upon the increased estimate.

The provisions of Street and Highways Code, Section 5258 became inapplicable for want of jurisdiction.

Respondent's award of the contract to respondent contractor represented a taking of petitioners' properties without due process of law, under United States Constitution, XIVth Amendment, Section 1.

Likewise, respondent's abandonment of notice and hearing which had served in the past to preserve the property rights of other owners constituted a depriva-

tion of the equal protection of the laws under United States Constitution, XIVth Amendment, Section 1.

Petitioners complain specifically of the following acts of respondents, each of which petitioner represents as having violated their constitutional rights to due process of law and equal protection of the law under United States Constitution, XIVth Amendment, Section 1.

(1) Treatment under Streets and Highways Code Sections 5258 and 5259, Division 7, as a waiver of any objections to the award of the contract, claiming them either to be tardy, and of other objections as being premature—without regard to whether the intended persons received actual notice of the contract award other than through notice by publication.

The appellate court of California has heretofore held that publishing notice without names of legal or assessed owners in the district to be assessed does not satisfy constitutional requirements of due process, nor could a validating act correct a deficiency in due process.—*Firestone Tire and Rubber Co. v. Board of Supervisors,* 166 Cal. App. 2d 519. If Sections 5258 and 5259 be found to violate this rule of law they are unconstitutional.

The Minnesota Supreme Court interpreted recent decisions of the Supreme Court of the United States to mean that violations of due process of law by notice by publication are extended to the special assessment field.—*Meadowbrook v. City of St. Louis,* 104 N.W. 2d 540.

The California Supreme Court agreed in *McNutt v. City of Los Angeles,* 187 Cal. 245, 201 Pac. 592, hold-

ing a mailing of notice of street improvement as insufficient to estop a property owner from pursuing his remedy at law.

Petitioners may avoid being saddled with a waiver of their objections to the award of a contract by their showing that respondents received every benefit of the allegedly premature service of notice of irregularity under Section 5258, and suffered no prejudice thereby.—*Taylor v. City of Los Angeles,* 180 Cal. App. 2d 255, 4 Cal. Rptr. 209.

Being curative acts, Streets and Highways Code, Sections 5258 and 5259 cannot cure a violation of due process of law.—*People v. Van Nuys Lighting District,* 173 Cal. 792, 797; *City Street Improvement Co. v. Pearson,* 181 Cal. 640; *Firestone v. Board of Supervisors, supra; Miller v. McKenna,* 23 Cal. 2d 774; *Jones v. Walker,* 47 Cal. App. 2d 566.

Where an increase is made in the estimate of costs of a public improvement which is to be subject to assessment, in appreciable amount above the original estimate (Streets and Highways Code, Section 5234 states over 20%), a land owner must be given notice of the increase and an opportunity to protest in order to comply with due process of law under United States Constitution, XIVth Amendment, Section 1.—*City of Chicago v. Terwilliger,* 253 Ill. 395, 97 N.E. 694; *City of Chicago v. Wilder,* 184 Ill. 397, 56 N.E. 395; *City of Chicago Heights v. Angus,* 267 Ill. 628, 108 N.E. 758; *Clarke v. City of Chicago,* 57 N.E. 15; *Payne v. Village of South Springfield,* 161 Ill. 285, 44 N.E. 105, 108; *Koich v. City of Helena,* 132 Mont. 194, 315 P. 2d 811; *City of Lewistown v. Warr,* 52 Mont. 353, 157 Pac. 954.

This court likewise held, in *Londoner v. Denver*, 210 U.S. 373, that defendant's attempt to assess a tax upon plaintiffs' land for street paving improvement was invalid because defendant had failed to afford plaintiffs the opportunity to present their views at a public hearing. Thus, defendant in the present case denied plaintiffs' rights to due process of law under United States Constitution, XIVth Amendment, Section 1.

ISSUE II.

Failure to Satisfy Requirement of Due Process of Law by Notice of Publication Alone.

Respondent's publication of notice of the award of an increased contract for the improvement without giving petitioners an opportunity to be heard thereafter and to protest the improvement did not provide a substitute for a public hearing that would afford due process and equal protection within the meaning of United States Constitution, XIVth Amendment, Section 1.

Where determination of the property to be charged and benefits to accrue is committed to an administrative board, due process requires that the property owners affected be given adequate notice and an opportunity to be heard both on the assessment and on the benefits. —*Flynn v. Chiapari*, 191 Cal. 139.

Respondents' rights to a hearing and to protest the contractual increase were disregarded, despite their pertinence to issues of jurisdiction, regularity, procedural conformity, and proper letting of contracts, which must be resolved before the work under the contract is commenced.

In the decision of the court below in the instant case, contrary rulings were made regarding the constitution-

al questions of deprivation of petitioners' rights to due process of law and equal protection of the law under United States Constitution, XIVth Amendment, Section 1.

It is respectfully submitted by petitioners that it is necessary that this honorable court settle the questions, not only on account of their importance in themselves to personal and property rights, but also on account of the fact that otherwise a dangerous legal precedent regarding public assessments may be allowed to remain.

Wherefore, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of California to the end that the judgment of the District Court of Appeal as approved by the Supreme Court of California may be reviewed and reversed by this Honorable Court.

ORVILLE RAINEY, BETTY L. RAINEY,
NORBERT F. MOORE, JANET MOORE,
ARTHUR MUIR, CLAIRE D. MUIR,
Petitioners,

By PHILL SILVER,
Counsel for Petitioners.

Opinion of the District Court of Appeal.

[Civ. No. 29341. Second Dist., Div. Four. June 24, 1965.]

George A. Fuller Company, Plaintiff and Respondent, v. Orville Rainey et al., Defendants and Appellants.

[Civ. No. 29216. Second Dist., Div. Four. June 24, 1965.]

Orville Rainey et al., Plaintiffs and Appellants, v. County of Los Angeles et al., Defendants and Respondents.

(Consolidated Cases.)

Appeals from judgments of the Superior Court of Los Angeles County. Vincent S. Dalsimer, Judg. Affirmed.

Actions by property owners in an improvement district for determination that the proceedings to establish the district were void and for an injunction against proposed special assessments and by a contractor to determine the validity of the proceedings to establish the district and of the contract awarded pursuant thereto. Judgments determining the proceedings and contract to be valid affirmed.

Phill Silver for Defendants and Appellants in case No. 29341 and for Plaintiffs and Appellants in case No. 29216.

Fulop, Rolston & Burns and Lowell R. Marks for Plaintiff and Respondent in case No. 29341.

Harold W. Kennedy, County Counsel, and Walter R. Burkley, Jr., Deputy County Counsel, for Defendants and Respondents in case No. 29216.

Kingsley, *J.*—These two cases both involve the validity of proceedings taken by the Board of Supervisors of the County of Los Angeles, looking toward the construction of a water system in the Topanga-East Malibu areas of Los Angeles County by a Special Improvement District and the validity of a contract awarded by the county for such work. Case No. 29216 is an action by certain property owners in the proposed district, on behalf of themselves and other protesting property owners, for a determination that the proceedings involved were void and for an injunction against proposed special assessments. Case No. 29341 is a statutory action, brought by the successful contractor, pursuant to sections 860-870 of the Code of Civil Procedure, and sections 5266-5274 of the Streets and Highways Code, to determine the validity of the said proceedings and of the contract awarded to it pursuant to those proceedings.

The issues in the two cases are the same; the two actions were tried together, resulted in findings in favor of validity and in judgments against the plaintiffs in case No. 29216 and in favor of the plaintiff in case No. 29341. The cases have been submitted here on a single set briefs and we deal with both appeals in this one opinion. For convenience, we refer to the defendants in case No. 29341 and the plaintiffs in case No. 29216 as "property owners," and to the plaintiff in case No. 29341 as the "contractor."

The basic facts are not in dispute, since the case was tried on the record of the proceedings taken by the board of supervisors, other public records, and stipulations as to testimony.

In May 1961, 48 residents of the area in question, acting under section 55109 of the Water Code, petitioned the board of supervisors to instruct the county engineer to prepare a report (commonly known as a feasibility report) recommending a means of providing water service for that area. Instead of proceeding to take the steps set out in the Water Code for the formation of a county waterworks district, the board began to take the steps set out in the Streets and Highways Code looking to the creation of a special assessment district under what is commonly known as the 1911 Act (now Sts. & Hy. Code, §§5100 et seq.) The board, acting under section 5130,[1] directed the county engineer to prepare a feasibility report. On April 24, 1962, such a report was submitted, indicating, as the "careful estimate of the costs and expenses of such work" (see § 5130), a figure of $2,225,000. The report was approved and filed by the board on May 8, 1962. On June 6, 1962, a resolution of intention to institute proceedings under the 1911 Act was adopted, as required by section 5131. On August 28, 1962, a resolution and notice of hearing, as required by section 5132, was duly adopted, the hearing date being fixed for October 18, 1962, and this resolution and notice were published as required by section 5133. Notices of the adoption of the resolution, and of the date of hearing, were thereafter mailed to property owners in the district, as required by sections 5194 and 5195. Protests were filed pursuant to section 5220, by 472 property owners within the proposed district.[2] Hearings on the protests

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[1]Section references hereafter are to the Streets and Highways Code unless otherwise indicated.

[2]This was less than the majority protest which, under section 5222, required postponement unless overruled by a four-fifths vote.

so filed were held and, after conclusion of the hearings, the board overruled the protests and ordered the work to be done. (§ 5221.)

On November 12, 1963, the board, acting under section 5231, adopted a resolution of intention to modify the work theretofore ordered—the modification involving an increase in cost of $175,000. The required notices were given, a second hearing was held, and the modification was adopted on December 5, 1963. (§§5231-5233.) In April and May 1964, similar modification proceedings, pursuant to sections 5231-5233, were taken, resulting in changes in the work to be done but not (so far as appears from the record) increasing the estimated cost beyond the previously established figure of $2,400,000. Bids were duly called for but the only bid received was in the amount of $3,499,400, and it was rejected by the board, since it exceeded the county engineer's estimate by more than 10 per cent.

The board then directed the county engineer to make a fresh estimate of costs. The engineer reported that his revised estimate was in the amount of $3,840,000.[3] The board then directed its clerk to send notices by mail, giving the revised estimate, pointing out that this would involve an increase in the contemplated assessment by about 60 per cent, and seeking a poll by post card as to the desire of the property owners to proceed. Notices were sent to the owners of 12,452 acres;[4]

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[3]The increase in the estimate is stated to have resulted in part from increases in costs generally in the two-year period which had intervened after the original estimate was made and in part from errors made in arriving at and computing the original estimate.

[4]The total acreage involved is 13,608; the owners of 1,156 acres were not notified, either because their addresses were un-

cards were returned from the owners of 6,017 acres, of which 3,426 acres were in favor of proceeding and 2,591 acres were in favor of abandonment. The board "assumed" that the owners who did not respond were in favor of proceeding. The board then, on September, 1, 1964, by a four-fifths vote, adopted an "addendum" which incorporated the revised cost estimate and also made some minor changes in the details of the work.[5] Bids were again requested, and the contractors submitted the lowest bid, in the amount of $2,965,000. The board, on September 29, 1964, awarded a contract on this basis and the statutory notice of award (§5248) was first published on October 8, 1964.

The complaint in the property owners' action (case No. 29216) was filed on September 28, 1964, and was served on September 29, 1964. A formal letter of protest was served on October 7, 1964. The contractor's statutory validation proceeding was commenced on October 30, 1964.

I

Except for a claim that the hearings held by the board of supervisors in the fall of 1963 were unfair, in that the board had prejudged the matter and had unduly restricted the property owners in presenting their objections, no complaint is made of any of the proceedings until after the rejection of the first bid.

For reasons set out hereinafter in this opinion, we conclude that this objection was not available to the

known or because the letters sent to them were returned as nondeliverable. It is apparently assumed that the remaining notices were, in fact, received by their addressees.

[5]The undisputed evidence is that these charges did not cause any increase in the cost of the work and that they did not affect its basic character.

property owners. However, even if it were properly urged in these proceedings, it is a contention without merit on these appeals. The issue of the fairness of the hearings was submitted to the trial court; that court found that the hearings "were conducted fairly and in accordance with all constitutional rights of the protestants." We have read the record of the hearings; it supports the finding of the trial court; that finding, being supported by the evidence, is binding here.

II

However, we conclude that neither the objection to the conduct of the 1963 hearing, nor the question of the validity of the post card poll, nor the contention that a fourth formal hearing, on notice, was required in order to accept the revised cost estimate and call for bids based thereon, are properly raised in these proceedings.

Whatever may be the constitutional requirement for a hearing where it is proposed to create an improvement district to perform public works financed by an ad valorem tax on the real property within the proposed district, it is now well settled that, in proceedings such as those before us, where the costs are to be assessed on a basis of the benefit of the work to the property involved, there is no constitutional right to any hearing until such time as proceedings to determine the individual assessments have begun. (*Brill v. City of Los Angeles* (1930) 209 Cal. 705, 708 [289 P. 850]; *Capital Freight Lines v. City of Sacramento* (1962) 206 Cal.App.2d 279 [23 Cal.Rptr. 752]; *Londoner v. Denver* (1908) 210 U.S. 373, 378-379 [28 S.Ct. 708, 52 L.Ed. 1103].) But, under the 1911 Act, those proceedings, and the property owners' hearing on the assess-

ment, are not commenced until after the work has been completed and the exact cost has been ascertained. (§§5340 et seq.)

The provisions in the act setting out the procedures to be followed prior to and including the award of a contract are purely statutory. They may loosely be called "jurisdictional," in that, unless waived or unless an omission or other noncompliance is cured by a curative or validating act, they must be followed in order to result in the establishment of a valid district. However, since these procedures are purely statutory, and are not constitutionally required, the Legislature which set them up may also provide that compliance with any of them may be waived in a manner provided by law. (*Chase v. Trout* (1905) 146 Cal. 350 [80 P. 81].)

The statute herein involved contains such a waiver provision; sections 5258 and 5259 provide:

"§ 5258. At any time within ten days from the date of the first publication of the notice of award of the contract, any owner of, or other persons having any interest in, any lot or land liable to assessment, who claims that any of the previous acts or proceedings relating to the work are irregular, defective, erroneous or faulty, may file with the clerk a written notice specifying in what respect the said acts and proceedings are irregular, defective, erroneous or faulty. The notice shall state that it is made pursuant to this section."

"§ 5259. All objections to any act or proceeding occurring prior to the time within which such objections are permitted to be filed in relation to the work, not made in writing and in the manner and at the time specified, shall be waived, if the resolution of intention

to do the work has been actually published, as provided in this division."

It is clear that the letter of protest filed with the board on October 27, 1964, was ineffective, since it came nine days after the period allowed by statute. But the property owners contend that the filing and service of their complaint in case No. 29216 satisfied the requirements of a notice under section 5258. The contractor, the county and the board of supervisors contend that the service of the complaint was not sufficient, both because it was premature (since it antedated by nine days the first publication of the notice of award) and because the complaint did not, as required by the final sentence of section 5258, state that it was a notice "made pursuant to" section 5258.

While we would not be prepared to hold ineffective a notice, otherwise sufficient in form, merely because it had been filed before the date set out in the section, still we think that the premature filing here, of a notice in the statutory form, was not such a compliance with section 5258 as to preserve any right to object to mere statutory irregularities. The inclusion, by a separate sentence, of the requirement that the notice of irregularity state expressly that it was made pursuant to the code section must be deemed to have had some definite purposes. And that purpose is not hard to find. The clerk of a board of supervisors receives, each working day, a mass of communications—claims, summons and complaints in litigation of all sorts, petitions, protests, notices and other documents. He should not be required to read each one with care, and to determine for himself its legal nature. A notice under section 5258 would, in the ordinary course of public business, be routed

to one department of county government, and to one set of officials, for analysis and report to the board; a summons and complaint in a civil action would be routed to other officials, for a different treatment. To require a property owner who seeks to halt proceedings such as these to make his intent clear and express is not only not unreasonable, but it is a requirement designed to make more efficient the conduct of public business and more effective the very protest itself. The Legislature having imposed this requirement as a condition of preservation of the right to object to irregular procedures, would-be objectors, and the courts, must follow and enforce the provision. Since the property owners' complaint did not purport to be a notice under section 5258, it was not such a notice; and, no notice under section 5258 having been given, section 5259 applies and the property owners are now barred from raising the issues herein relied on.

The judgments are affirmed.

Files, *P. J.*, and Jefferson, *J.*, concurred.